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C.M.A. No.1068 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.1068 of 2022

M.Ravindran

..

Appellant

Vs.

1.N.Chitra

(R-1 set exparte before the Tribunal)

2. The Oriental Insurance Co. Ltd.,

Motor Third Party Claim Cell,

No.115, Prakasam Salai, 2nd Floor,

Broadway, Chennai - 600 108.

..

Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 25.10.2021 passed in MCOP No.1511 of 2016 on the file of Motor Accident Claims Tribunal, Chennai (IV Small Causes Court), Chennai.

For Appellants : Mr.Varadha Kamaraj

For Respondents : Mr.P.Kandasamy

for R2



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J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants challenging the quantum of compensation granted by the Tribunal in the award dated 25.10.2021 passed in MCOP No.1511 of 2016 on the file of Motor Accident Claims Tribunal, Chennai (IV Small Causes Court), Chennai.

2.The appellant filed M.C.O.P. No.1511 of 2016 on the file of the Motor Accident Claims Tribunal, (IV Small Causes Court), Chennai claiming a sum of Rs.50,00,000/- as compensation for the injuries sustained by him in the accident that took place on 09.12.2015.

3. According to the appellant, on 09.12.2015, while he was riding the motorcycle bearing Regn.No.TN12 4633 from Moolakothalam to Washermanpet along the C.B.Road in the South to North direction, near Railway Bridge, a lorry bearing Regn. No.TN25 R 2166 which was driven by its driver in a rash and negligent manner along the said road in the North to



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South direction, hit against the motorcycle and caused the accident. In the above said accident, the appellant sustained grievous injuries and hence he filed the claim petition claiming compensation against the respondents.

4. The 1st respondent remained exparte before the Tribunal.

5. The 2nd respondent filed counter statement denying the averments made in the claim petition. The 2nd respondent denied the age, avocation, income of the appellant and nature of injuries sustained in the accident. The total compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the appellant examined himself as PW1 and marked nineteen documents as Exs.P.1 to Exs.P.19. Neither documents were marked nor witnesses were examined on the side of the 2nd respondent. The Medical Board Certificate issued by the Regional Medical Board, Govt. Kilpauk Medical College Hospital, Chennai was marked as Ex.C1.



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7. The Tribunal after considering the evidence and documents filed on the side of the appellant, held that the accident occurred due to the rash and negligent driving by the driver of the lorry belonging to the 1st respondent and directed the 2nd respondent / insurance company, being the insurer of the lorry to pay a sum of Rs.4,98,853/- as compensation to the appellant at the first instance and recover the same from the first respondent, owner of the vehicle since the driver of the lorry did not possess valid driving licence at the time of accident. Aggrieved by the said order, the appellant has preferred the present appeal seeking enhancement of compensation.

8. The learned counsel appearing for the appellant submitted that the Tribunal while computing the compensation to be awarded to the appellant, had not taken into account Ex.P3 – Medical Bills produced on behalf of the appellant. As per Ex.P3- final medical bill issued by the hospital, the appellant had to pay a sum of Rs.10,22,584/- towards medical expenses. Since the appellant had taken mediclaim policy, a sum of Rs.4,00,000/- was



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reimbursed by the mediclaim insurance company and the balance medical bill paid by the appellant was Rs.6,22,584/-. The Tribunal, however had taken into consideration Ex.P7 – physiotherapy bills for a sum of Rs.1,20,000/- and Ex.P8 – medical bills issued by the hospital for a sum of Rs.8,853/- and awarded only a sum of Rs.1,28,853/- under the head medical expenses. The Tribunal has not awarded any amount towards future medical expenses. The amounts awarded by the Tribunal under the heads loss of amenities, pain and sufferings, transport expenses, extra nourishment and attender charges are meagre. For the above reasons, the learned counsel prayed for enhancement of compensation.

9. Per contra, the learned counsel for the respondent submitted that the Tribunal had taken into consideration all the documents filed in support of the claim for medical bills and had rightly awarded a sum of Rs.1,28,853/- under the head medical expenses. The learned counsel further submitted that the appellant had taken mediclaim policy and the medical expenses have been reimbursed by the mediclaim insurance company. Hence, the appellant is not



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entitled to claim the medical expenses. The compensation awarded by the Tribunal is just and reasonable and prayed for dismissal of the appeal.

10. Though notice has been served on the first respondent and his name has been printed in the cause list, there is no representation for him either in person or through counsel.

11. Heard the learned counsel appearing for the appellant as well as 2nd respondent and perused the materials available on record.

12. The only issue involved in this appeal is whether the Tribunal was right in awarding a sum of Rs.1,28,853/- as compensation under the head medical expenses.

13. From the materials on record, it is seen that the appellant has produced three documents before the Tribunal to establish his claim under the head medical expenses. Ex.P3 is the final medical bill issued by the hospital



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showing a sum of Rs.10,22,584/- as the medical expenses for the treatment taken by the appellant. Ex.P3 also contains a letter issued by the hospital which shows that out of Rs.10,22,584/-, the mediclaim insurance company had reimbursed a sum of Rs.4,00,000/- and the balance amount paid by the appellant was Rs.6,22,584/-. The Tribunal had not taken into consideration this amount though it had referred Ex.P3-final medical bills. Thus the appellant is entitled to this amount in addition to the amount towards physiotherapy treatment and other medical expenses incurred by him. Ex.P7 is the physiotherapy bill for the treatment taken by the appellant for the period from July 2016 to February 2018. The Tribunal had accepted Ex.P7 - physiotherapy bill for Rs.1,20,000/- and Ex.P8 series – medical bills for Rs.8,853/- and awarded a sum of Rs.1,28,853/- only towards medical expenses. Thus, the amount awarded by the Tribunal under the medical expenses is hereby enhanced to Rs.7,51,437/- [Rs.10,22,584 – Rs.4,00,000 = 6,22,584 + 8853 + 1,20,000/-]. The compensation awarded by the Tribunal under other heads are just and reasonable and hence the same are confirmed. Thus, the compensation awarded by the Tribunal is enhanced from



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Rs.4,98,853/- to Rs.11,21,437/-, break-up as follows -

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Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	1,75,000/-	1,75,000/-	Confirmed
2.	Medical expenses and physiotherapy bills	1,28,853/-	7,51,437/-	Enhanced
3.	Loss of income	34,000/-	34,000/-	Confirmed
4.	Pain and sufferings	25,000/-	25,000/-	Confirmed
5.	Transportation expenses	10,000/-	10,000/-	Confirmed
6.	Nutrition expenses	30,000/-	30,000/-	Confirmed
7.	Damages to clothes	2,000/-	2,000/-	Confirmed
8.	Attender charges	19,000/-	19,000/-	Confirmed
9.	Loss of amenities	50,000/-	50,000/-	Confirmed
10.	Mental Agony	25,000/-	25,000/-	Confirmed
	Total	4,98,853/-	11,21,437/-	Enhanced by Rs.6,22,584/-

14. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,98,853/- is hereby enhanced to Rs.11,21,437/- together with interest at



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7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The second respondent / Insurance Company is directed to deposit the award amount, now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of a receipt of copy of this Judgment, at the first instance and recover the same from the first respondent, owner of the lorry. On such deposit, the appellant is permitted to withdraw the award amount, now determined by this Court, along with interest and costs, less the amount if any, already withdrawn. The appellant is directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

26.07.2023

rgr

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The IV Judge,
Motor Accident Claims Tribunal
Small Causes Court,
Chennai.

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2. The Section Officer,
VR Section,
High Court, Madras.

SUNDER MOHAN, J

rgr

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Dated: 26.07.2023

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